

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 15-11

IGOR OVCHINNIKOV, ET AL

v.

MICHAEL HITRINOV ET AL

Consolidated With
DOCKET NO. 1953(I)

KAIRAT NURGAZINOV, ET AL

v.

MICHAEL HITRINOV ET AL

**RESPONDENTS' CONDITIONAL RESPONSE TO
COMPLAINANTS' UNAUTHORIZED REPLY ON THEIR
MOTION TO DICTATE THE PRESIDING OFFICER'S SCHEDULE**

Apart from its abysmal language, the only thing remarkable about Complainants purported Reply on their motion to dictate the Presiding Officer's schedule is how unremarkable it is. It is precisely of a piece with Complainants' other recent pleadings – lacking in merit and contrary to the rules, but designed to turn the proceeding into a three-ring circus with the hope that Complainants' failure to demonstrate either subject matter jurisdiction or standing will get lost in the confusion.

Complainants again proudly defy the Commission's rules on replies, apparently challenging the Presiding Officer to do something about their seriatim transgressions. Because

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Office of the Secretary

the Complainants have not obtained, or even sought, the Presiding Officer's permission to file this unauthorized reply, it should, like prior replies submitted in violation of the Rules, be ignored by the Presiding Officer. If the Presiding Officer decides nevertheless to consider yet another unauthorized pleading by Complainants, then, as previously shown, Commission precedent mandates that he also consider this brief reply.

The substance of Mr. Nussbaum's unauthorized reply is simply a repeat of the motion, which itself is simply a repeat of his earlier motion. In none of those pleadings did he set forth any viable grounds for relief, much less a sufficient reason to dictate the Presiding Officer's schedule.

Mr. Nussbaum first asserts that it is "axiomatic" that if Complainants were the owners of the vehicles, then Empire acted as an NVOCC. That proposition may be axiomatic to Mr. Nussbaum, but not to anyone versed in the Shipping Act. Even if Empire might have to dispute ownership with Complainants in a commercial court, it would still have a beneficial interest in those shipments by virtue of the arrangement between Empire and Global, and so would be qualified to act as shipper vis-à-vis MSC. See 46 C.F.R. 515.2(b).

Mr. Nussbaum next posits that if Complainants were the owners and Empire was an NVOCC, then "*a fortiori*" Empire violated the Shipping Act. Not only is that argument not "*a fortiori*," but it is obviously wrong. As the FMC cases we previously cited and discussed show, "ownership" of cargo, alleged or proven, does not make the owner a party to the transportation document, and so there is no subject matter jurisdiction regardless of how the question of

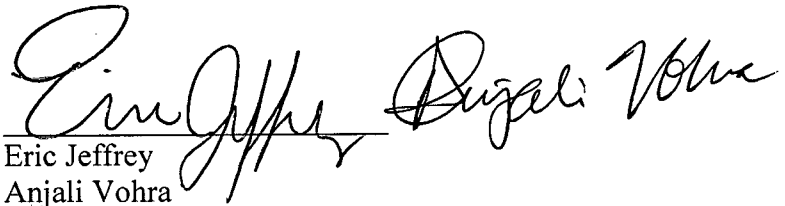
ownership is decided.¹ Nor is there any standing, as Complainants admittedly did not pay anything to Empire, which, as previously demonstrated, is the *sine qua non* of standing.

Even if there was some semblance of relevance to the documents Complainants purportedly seek, relief is precluded because, as said multiple times, Respondents simply do not have possession or control of any such documents not already provided. Although Respondents certainly would provide such a certificate if ordered by the Presiding Officer, we believe that such a measure is wholly unnecessary and would simply allow Mr. Nussbaum another opportunity to add further rings of irrelevance to his traveling circus.

CONCLUSION

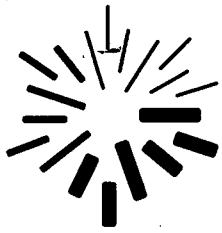
For the foregoing reasons, Complainants repetitious motion to discover documents that Respondents neither possess nor control and that have no bearing on the Motion for Judgment on the Pleadings should be denied.

Respectfully submitted,

The block contains two handwritten signatures in black ink. The first signature, on the left, is 'Eric Jeffrey' and the second, on the right, is 'Anjali Vohra'. Both signatures are written in a cursive, flowing style.

Eric Jeffrey
Anjali Vohra
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¹ If ownership, rather than being party to a transportation contract, were the test for subject matter jurisdiction, then Complainants would also be able to bypass Empire entirely and file claims against MSC, the VOCC, even though Complainants are no more a party to the transportation arrangement with MSC than they are the arrangement between Global and Empire. That would certainly set the law of shipping upside down.



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September 13, 2016

VIA FIRST CLASS MAIL

The Hon. Karen V. Gregory
Secretary of Federal Maritime Commission
800 North Capitol St.
Room 1046
Washington, D.C. 20573

Re: Docket No. 15-11 – Ovchinnikov v. Hitrinov

Dear Ms. Gregory:

Enclosed for filing in the above-captioned matter are an original true copy and five (5) additional copies of:

1. Respondents' Conditional Response to Complainants' Unauthorized Reply on Their Motion to Dictate the Presiding Officer's Schedule

If you have any questions, please do not hesitate to contact me.

Best regards,

Anjali Vohra

Enclosures